

REPRESENTATIVE FOR PETITIONER:  
Timothy D. Hernly, BARNES & THORNBURG  
Richard J. Deahl, BARNES & THORNBURG

REPRESENTATIVES FOR RESPONDENT:  
Steve Carter, ATTORNEY GENERAL OF INDIANA  
Linda I. Villegas, DEPUTY ATTORNEY GENERAL

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

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|---------------------------------|---|-------------------------------------|
| THE MAJESTIC STAR CASINO, LLC,  | ) | Petition Nos.: 45-004-97-1-4-00007R |
|                                 | ) | 45-004-97-3-4-00007R                |
|                                 | ) |                                     |
| Petitioner,                     | ) | County: Lake                        |
|                                 | ) |                                     |
| v.                              | ) | Township: Calumet                   |
|                                 | ) |                                     |
| BOOKER BLUMENBURG, JR.          | ) | Parcel No.: 001254001360024         |
| TOWNSHIP ASSESSOR OF CALUMET    | ) |                                     |
| TOWNSHIP, LAKE COUNTY, INDIANA, | ) |                                     |
|                                 | ) | Assessment Years: 1997              |
| Respondent.                     | ) |                                     |
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On Remand from the Indiana Tax Court  
Cause No. 71T10-0305-TA-24

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**REFERAL TO THE CALUMET TOWNSHIP ASSESSOR, LAKE COUNTY**

The Indiana Board of Tax Review (the “Board”) having reviewed the decision of the Tax Court in the above matter dated November 12, 2004 (attached and incorporated by reference), and pursuant to Ind. Code § 6-1.1-15-8, refers this matter to the Calumet Township Assessor, Lake County (the “Assessor”) to make another assessment consistent with the Tax Court decision for the reasons contained herein.

## **Facts and Procedural History**

1. The Majestic Star Casino, LLC (Majestic Star) appeals the Board's final determination valuing its casino riverboat (riverboat) for the March 1, 1997, assessment date.
2. Majestic Star is an Indiana limited liability company that operates a casino riverboat – the Majestic Star II – on Lake Michigan. The Majestic Star II launched in October, 1997, is harbored at Buffington Harbor in Gary, Indiana. The Majestic Star II shares a docking pavilion with another riverboat, the Trump Casino.
3. While the Majestic Star II was being built, Majestic Star leased a smaller riverboat from a third-party to use in its operation. This smaller riverboat, the Majestic Star I, was built in 1972 and had a certified carrying capacity of 1,900 people. Prior to its use by Majestic Star, the riverboat had been used as a dinner cruise boat in Pennsylvania; accordingly, Majestic Star had to make some modifications to the riverboat in order to convert it for use until the Majestic Star II was completed.
4. The Calumet Township Assessor (Assessor) assigned the Majestic Star I an assessed value of \$5,143,490 for the March 1, 1997 assessment date. Majestic Star appealed its assessment to the Lake County Property Tax Assessment Board of Appeals (PTABOA). After conducting a hearing, the PTABOA reduced Majestic Star's assessment to \$3,271,340.
5. Majestic Star filed a Form 131 petition to appeal the assessment of Majestic Star I. The Board held a hearing and issued a final determination denying Majestic Star's request for relief.
6. On May 23, 2003, Majestic Star initiated an original tax appeal. The Tax Court heard oral arguments on July 15, 2004. On November 12, 2004, the Tax Court issued its decision.

## Discussion of Remanded Issue

7. The Tax Court addressed four issues in its decision. First, the Tax Court states: Majestic Star asserts that Indiana Code § 6-1.1-1-15(5), which classifies riverboats as real property, is unconstitutional under Article 10, §1 of the Indiana Constitution. Second, the Tax Court addresses whether the Board erred when it *sua sponte* withdrew matters deemed admitted by the Assessor under Indiana Trial 36. Next, the Tax Court addressed the physical depreciation of the riverboat. Finally, the Tax Court addressed the obsolescence to which the riverboat is entitled.
8. The Tax Court found no violation of Article 10 § 1 of the Indiana Constitution and affirmed the Board's decision with respect to this issue. *Majestic Star Casino, LLC v. Blumenburg*, 817 N.E.2d 322, 328 (Ind. Tax Ct. 2004).
9. Second, Majestic Star argued that the Board erred when it withdrew matters deemed admitted by the Assessor under Indiana Trial Rule 36. Prior to the hearing before the Board, Majestic Star served the Assessor with requests for admissions pursuant to Trial Rule 36. The Assessor never responded to these requests. Therefore, pursuant to Trial Rule 36, the matters contained in these requests for admissions were conclusively established by operation of law. *Majestic Star Casino, LLC v. Blumenburg*, 817 N.E.2d 322, 328 (Ind. Tax Ct. 2004).
10. The tax court held that the Board's withdrawal of the Assessor's admissions was in error and reversed the Board's determination on this issue. *See Gen. Motors Corp. v. Aetna Cas. & Sur. Co.*, 573 N.E.2d 885 (Ind. 1991).
11. Majestic Star challenged the amount of physical depreciation granted its riverboat for the 1997 assessment. Majestic Star argued it was entitled to 55% physical depreciation on Majestic Star I. The Tax Court held that pursuant to Trial Rule 36, the Assessor had admitted that Majestic Star I was entitled to 55% physical depreciation. Therefore, the

Tax Court reversed the Board's final determination and held the property is entitled to a 55% physical depreciation adjustment.

12. Finally, Majestic Star challenged the amount of obsolescence the riverboat was entitled to. The Tax Court held, pursuant to Trial Rule 36, the Assessor had admitted that Majestic Star I was entitled to an obsolescence adjustment of 80%. However, the Tax Court held that because Majestic Star subsequently argued at the Board's hearing, and before the Tax Court, that it was entitled to a 40.7% obsolescence adjustment, the Majestic Star is limited to that amount. The Tax Court reversed the Board's decision and held the property is entitled to a 40.7% obsolescence adjustment.
13. The Tax Court remanded the decision to the Board with orders to instruct the local assessing officials to assess the property in accordance with its decision. Accordingly, the Board directs the Assessor to apply a 55% physical depreciation adjustment to the Majestic Star I for the year at issue. Further, the Board directs the Assessor to apply a 40.7% obsolescence factor to the Majestic Star I for the year at issue.

Therefore, pursuant to Ind. Code § 6-1.1-15-8, the Board refers this matter to the Calumet Township Assessor to make another assessment consistent with the Tax Court decision, this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

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Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS ON REMANDED CASE -

You may petition for judicial review of this final determination of corrected assessment pursuant to the provisions of Indiana Code § 6-1.1-15-9. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.